

**EL CENTRO SECTOR
STANDARD OPERATING PROCEDURE
NONCOMPLIANT MOTORIST PROTOCOL**

SHORT TITLE: (b) (7)(E)

EFFECTIVE DATE: January 25, 2018

RESPONSIBLE OFFICE: Policy and Compliance Branch

SUPERSEDES: N/A

1. PURPOSE.

1.1 This publication implements El Centro Sector (ELC) Standard Operating Procedure (SOP) 4000-001, *Noncompliant Motorist Protocol*. This SOP provides guidance and options available to Border Patrol Agents (BPA) when encountering a noncompliant motorist at a checkpoint.

1.1.1 This publication applies to all ELC permanent and detailed personnel.

1.2 All records created as a result of processes prescribed in this publication should be maintained in accordance with CBP records management directives.

1.3 Refer recommended changes and questions about this publication to the Responsible Office (RO) listed at the top of the page.

1.4 This publication may be supplemented by field units' SOPs.

1.5 Waivers are not authorized for this SOP.

1.6 The use of the name or mark of any specific manufacturer, commercial product, commodity, or service in this publication does not imply endorsement by the United States (U.S.) Border Patrol.

2. ROLES AND RESPONSIBILITIES.

2.1 Chief Patrol Agent (CPA).

2.1.1 Is the approving official for guidance issued in the ELC.

2.1.2 Is the approving official for any deviations from the SOP.

2.2 Deputy Chief Patrol Agent (DCPA).

2.2.1 Is the alternate designated approving official in the ELC.

2.3 Division Chief of Law Enforcement Operations Division.

2.3.1 Ensures that operational components comply with the SOP.

2.4 Director, Policy & Compliance Branch.

2.4.1 Is the approving official on behalf of the CPA regarding distribution of the SOP.

2.5 Assistant Chief Patrol Agent (ACPA) and Patrol Agent in Charge (PAIC).

2.5.1 Ensures agents within their program areas are aware and in compliance with this SOP.

2.5.2 Each station PAIC is required to complete and submit a contingency plan for continuing operations in the event a noncompliant motorist's prolonged disruption is to such of a degree it impedes operations, or endangers the safety of Border Patrol Agents (BPA), employees, and the public.

3. AUTHORITY OF BORDER PATROL AGENTS AT IMMIGRATION CHECKPOINTS.

3.1 Federal law and legal precedents give BPAs authority to establish immigration checkpoints within a reasonable distance from any external boundary of the U.S. and to question vehicle occupants regarding their citizenship and right to be in the U.S. No person or vehicle is exempt from inspection procedures at Border Patrol checkpoints.

3.1.1 The only exceptions shall be in cases where health, safety, or exigent circumstances exist.

3.2 BPAs must be familiar with, and strictly adhere to court decisions that apply to their area of operations. In addition, they must differentiate between the parts of those decisions that apply to the stopping of vehicles to examine occupants and the parts that apply to the searching of those vehicles.

3.3 All BPAs performing and supervising checkpoint operations are required to know, understand, and be able to articulate their authorities and options when encountering noncompliant motorists.

3.4 All BPAs performing checkpoint operations shall have available a *Checkpoint Authority* card (see Attachment 4). When challenged on checkpoint legality and authority, the BPA may read (to the motorist) the authority from the card.

3.4.1 BPAs are under no obligation to respond to a motorist's request to cite the authorities, but should be able to articulate what the authorities are.

3.5 Noncompliant motorists at checkpoints do not deprive BPAs of their authority or responsibility to conduct searches and immigration inspections. BPAs may question all occupants of vehicles traveling through an immigration checkpoint about their citizenship and right to be in the U.S.

3.5.1 A noncompliant motorist is a motorist who fails or refuses to comply with, offers passive resistance or mechanical resistance to a BPA's verbal commands.

3.5.2 BPAs may deploy canines, request subject's immigration and or travel documents, and develop reasonable suspicion of other wrongdoing.

3.6 Section 287 of the Immigration and Naturalization Act (INA).

3.6.1 Gives BPAs the authority to, within a reasonable distance of the border, board and search for aliens in any vehicle;

3.6.2 Authorizes BPAs to interrogate any alien or persons believed to be an alien as to their right to be or remain in the U.S.;

3.6.3 Allows BPAs, subject to constitutional limits, to *"take and consider evidence concerning the privilege of any person to enter, reenter, pass through or reside in the United States, or concerning any matter which is material and relevant to the enforcement of (the Immigration and Nationality Act) and the administration of (the agency)."*

3.7 8 U.S.C. § 1357 (a)(3)

3.7.1 BPAs shall have the power, without warrant and within a reasonable distance from any external boundary of the United States, to board and search for aliens any vessel within the territorial waters of the United States and any railway car, aircraft, conveyance, or vehicle, and within a distance of twenty-five miles from any such external boundary to have access to private lands, but not dwellings, for the purpose of patrolling the border to prevent the illegal entry of aliens into the United States.

3.8 U.S. vs Davila-Avila, 895 F. 2d 206 (5th Circuit 1990).

3.8.1 A canine alert is probable cause for a warrant-less search of a vehicle.

3.8.2 A canine sniff in the primary inspection lane(s) of a checkpoint is in accordance with the 4th Amendment.

3.8.3 A canine sniff at secondary inspection is in accordance with the Fourth Amendment.

3.9 U.S. vs Martinez-Fuerte, 428 U.S 543 (1976).

3.9.1 Checkpoint operations for the purpose of conducting immigration inspections of travelers, absent reasonable suspicion, are constitutional.

3.9.2 BPAs may ask individuals about their citizenship and request documents proving their right to be in the U.S.

3.9.3 BPAs cannot conduct a search of the vehicle and its occupants at an immigration checkpoint without probable cause, consent, or unless a Fourth Amendment exception applies.

3.10 Criminal activity for noncompliant motorist.

3.10.1 18 U.S.C. § 758.

3.10.1.1 Allows for criminal penalty and a fine for fleeing or evading a checkpoint.

3.10.2 18 U.S.C. § 111.

3.10.2.1 Provides criminal prosecution when an individual forcibly assaults, resists, impedes, opposes, intimidates, or interferes with a federal officer while engaged in performance of official duties.

3.10.3 19 U.S.C. § 1581 (d).

3.10.3.1 Provides an administrative penalty from \$1,000 to \$5,000 for failure to stop at command by a Customs Officer.

4. OPTIONS WHEN ENCOUNTERING A NONCOMPLIANT MOTORIST.

4.1 BPAs should be aware that a noncompliant motorist may be a person trying to provoke a negative response to post on social media, a decoy for illicit activity, or is not aware of our authority or the purpose of the checkpoint.

4.2 At all times, BPAs will conduct themselves in a professional and courteous manner and should not take encounters with noncompliant motorists personally.

4.3 The following options are not an exhaustive list, but represent actions that may be taken when encountering a noncompliant motorist. If a BPA is unsure how to proceed with the situation, the agent should consult with their supervisor.

4.4 Upon stopping a vehicle in the primary inspection lane, BPAs should:

4.4.1 Identify themselves as Border Patrol Agents;

4.4.2 Announce they are performing an immigration inspection;

4.4.3 Attempt to establish citizenship.

4.5 Anytime the questioning goes beyond routine, vehicles should be directed out of the lane of traffic and into the secondary inspection area.

4.6 If the motorist is noncompliant and refuses to roll down windows or answer questions:

4.6.1 It is recommended the incident be recorded on video, with a government owned camera, to document the actions/inactions of the noncompliant motorist (see Annex A for further information).

4.6.1.1 The video recording may be used to support administrative or criminal cases against the motorist and to refute any false allegation.

4.6.2 BPAs are reminded that refusal to answer questions and/or roll down windows alone is not unlawful.

4.6.3 Consider if the motorist can reasonably hear and understand your instructions. There may be other factors influencing their behavior, such as health problems or impairment that may influence your determination of a reasonable course of action.

4.6.4 At the BPA's discretion, the motorist may be allowed to proceed without further delay if the BPA reasonably believes the motorist and the vehicle's occupants are legally present in the U.S. and is convinced no criminal activity exists and (b) (7)(E) are negative.

4.7 If the BPA has concerns about whether the motorist or his/her passengers are legally present in the U.S.:

4.7.1 The BPA will immediately notify his/her supervisor of the motorist.

4.7.2 The BPA will advise the motorist he/she will not be permitted to proceed until completion of the inspection.

4.7.3 If the motorist continues to be noncompliant, the BPA may direct the motorist to secondary inspection.

4.7.4 If the motorist complies with the directive to move to secondary inspection, he/she may be detained for a reasonable period of time to determine the vehicle occupants' legal U.S. presence.

4.7.4.1 Courts have deemed three to five minute secondary inspections to be reasonable.

4.8 If the motorist refuses to move his/her vehicle to secondary inspection, agents may choose one or more of the following, as applicable:

4.8.1 BPAs may (b) (7)(E) until the BPAs have established the citizenship and right to be in the U.S. of the driver and the occupants of the vehicle.

4.8.2 Continue the inspection at primary inspection, if conditions are safe to do so.

4.8.3 The BPA will attempt to determine the motorist's immigration status by leveraging resources such as, but not limited to:

4.8.4 (b) (7)(E)

4.8.5 (b) (7)(E)

4.8.6 (b) (7)(E)

4.8.7 (b) (7)(E)

4.8.8 (b) (7)(E)

4.8.8.1 Divert traffic safely around the noncompliant motorist if the motorist remains in the primary lane for an extended period of time.

4.9 If a reasonable amount of time has passed and reasons to detain the motorist still exist, BPAs should consider other courses of action such as but not limited to:

4.9.1 Request assistance from other law enforcement agencies to obtain a search warrant, or have the vehicle removed.

4.9.2 Advise the motorist they are creating a possible safety hazard and if they refuse to move their vehicle to secondary inspection, the BPAs will be required to move it for them. Under this circumstance, BPAs are encouraged to seek assistance from state and local law enforcement because the driver's actions may violate state/local traffic laws.

4.9.3 In an attempt to persuade the motorist to move to secondary inspection to mitigate the safety hazard, agents should inform the noncompliant motorist that the public may submit comments (i.e. complaints) regarding the performance of BPAs or checkpoint operations with a supervisor on-site. By doing so, this provides the motorist an opportunity to express their concerns without impeding the roadway or agents' performance of duties. Refer to Section 6, Complaints within this procedure.

4.9.4 If conditions do not allow the continuation of a brief and safe inspection, agents should move it for them.

4.9.5 As a last resort, BPAs may use force to move the motorist and their vehicle into secondary to prevent any safety hazards (the use of force continuum should be objectively reasonable and prudent to the situation).

4.10 Implementation of the station's contingency plan for continuing operations or suspension of operations may be necessary during the encounter.

4.10.1 Consideration should be given to conditions relevant to checkpoint operations, such as: volume of traffic; available resources; ability to continue inspections in alternate lanes; timely removal of impediment from primary inspection lane; or response by other agents or law enforcement agencies, if requested.

5. REPORTING INCIDENTS OF NONCOMPLIANT MOTORISTS.

5.1 BPAs will immediately notify their supervisor when encountering noncompliant motorists.

5.2 All incidents involving noncompliant motorists will be documented via (b) (7)(E) and must be reported in a timely manner (memorandum from Chief Michael J. Fisher, dated November 8, 2012 - *Guidance on Noncompliant Motorists Encountered at U.S. Border Patrol Checkpoints*).

(b) (7)(E)

5.4 If the noncompliant motorist is turned over to another law enforcement agency, record response.

5.5 An After Action debrief will be conducted after every incident under direction of the respective station's PAIC.

6. COMPLAINTS.

6.1 Complaints, compliments and allegations from the public should be addressed immediately, in person and by a supervisor whenever possible. The public may also submit their comments to ELC Headquarters, Stations, and/or the CBP INFO Center.

6.2 Official complaints shall be handled in accordance with current service policy.

7. TRAINING.

7.1 All BPAs will be provided training (law, scenario based, etc.) regarding noncompliant motorist.

8. AUTHORIZATION.

The Chief Patrol Agent's approval of this *Noncompliant Motorist Protocol SOP*.

Chief Patrol Agent: _____

Date: _____

1/25/18

Attachment 1

GLOSSARY OF REFERENCES AND SUPPORTING INFORMATION

References

Chapter 13: Checkpoint Operations, *Border Patrol Handbook*.

Use of Force Policy, Guidelines and Procedures Handbook, HB 4500-01C.

U.S. Border Patrol Checkpoint Policy.

Legal Options Available to Border Patrol Agents Encountering Uncooperative Individuals at Checkpoints Memorandum from the Associate Chief Counsel to the Chief of Border Patrol, dated October 20, 2009.

Significant Incident Report – Reporting Requirements memorandum from ELC CPA (b) (6), (b) (7)(C) to ELC, dated January 19, 2017.

Guidance on Noncompliant Motorists Encountered at U.S. Border Patrol Checkpoints memorandum from U.S. Border Patrol Chief Michael J. Fisher to all Chief Patrol Agents, dated November 8, 2012.

8 C.F.R. §287.1 (a)(2) *Reasonable Distance*.

8 U.S.C. §1225 *Inspection by Immigration Officers*.

8 U.S.C. §1357 *Powers of Immigration Officers and Employees*.

18 U.S.C. §111 *Impeding a Federal Officer*.

Abbreviations and Acronyms

ACPA – Assistant Chief Patrol Agent

BPA - Border Patrol Agent

CBP - U.S. Customs and Border Protection

CPA - Chief Patrol Agent

DCLEOD – Division Chief of Law Enforcement Operations Division

DCMROD – Division Chief of Mission Readiness Operations Division

DCPA - Deputy Chief Patrol Agent

ELC – El Centro Sector

NCIC - National Crime Information Center

NLETS - National Law Enforcement Telecommunications System

PAIC - Patrol Agent in Charge

R/O – Responsible Office

SOP - Standard Operating Procedure

TECS - Treasury Enforcement Communications System

U.S. – United States

Terms

Checkpoint – A pre-established location for formal inspections of all traffic on a specific roadway.

Mechanical Resistance – A type of active resistance, where a subject uses a mechanical or other object to resist an officer/agent's efforts. The subject's efforts are not directed toward the officer/agent but rather appear intended to thwart an officer's/agent's control efforts by physically securing or holding to another object (page 5, HB 4500-01C).

Noncompliant Motorist - A noncompliant motorist is a motorist who offers passive resistance or mechanical resistance to a BPA's verbal commands.

Passive Resistance – A subject who is not believed to represent an immediate threat or flight risk, and who is not offering physical resistance to an Authorized Officer's/Agent's control efforts, but is not cooperative (page 5, HB 4500-01C).

Attachment 2

ELC NONCOMPLIANT MOTORIST GUIDANCE

Border Patrol Agent

In the event a motorist refuses to answer an agent's questions in the primary inspection lane, the primary agent should refer the motorist to the secondary inspection area.

If the motorist refuses to move the vehicle to secondary inspection, the agent will communicate the following information to the driver:

- *Sir/Ma'am, this is a U.S. Border Patrol checkpoint, and we are conducting immigration inspections under federal law.*
- *You are impeding and obstructing our operations and creating a traffic hazard. Move your vehicle immediately to the secondary inspection area, or you may be subject to arrest and criminal charges.*

If the motorist still refuses to move into the secondary inspection area, immediately contact the checkpoint supervisor and assign an agent to video record the remainder of the contact with the noncompliant motorist. Upon assuming command of inspection, the supervisor will communicate the following information to the driver:

(Start video recording of supervisor contact)

- *Sir/Ma'am, this is a U.S. Border Patrol checkpoint and we are conducting an immigration inspection under federal law.*
- *Move your vehicle immediately to the secondary inspection area to allow us to complete the immigration inspection. If you do not move your vehicle, you may be subject to arrest. This will result in a charge on your permanent criminal record and if prosecuted, can be punishable by a fine or imprisonment.*

If the motorist still refuses to move into the secondary inspection area, inform the motorist:

- *Since you refuse to comply with our instructions, we will be placing controlled tire deflation devices in the front and rear of your vehicle for safety reasons and to continue our investigation. You will not be released until our investigation is complete.*
- *Do not attempt to leave. Keep your hands visible to agents at all times. Failure to follow these instructions or exhibiting threatening behavior may result in damage to your vehicle and injury to your person.*

Divert traffic safely around the noncompliant motorist. (b) (7)(E)

(b) (7)(E)

(b) (7)(E)

and an exterior K9 sniff. The SBPA will then make a determination to either release the vehicle or continue the detention due to suspicion of criminal activity.

Attachment 3

Annex A

1. United States v. Martinez-Fuerte, 428 U.S. 543 (1976)

1.1. In *United States v. Martinez-Fuerte*, 428 U.S. 543 (1976), the Supreme Court interpreted INA § 287(a)(1) and (3) to authorize the Border Patrol to operate immigration checkpoints, subject to limitations imposed by Title 8 of the Code of Federal Regulations and the Constitution. These zero suspicion seizures were found to be reasonable, based on the public interest served i.e. the prevention of an inadmissible person's entry into the United States and the short duration of the seizure. In weighing out the two factors the Court determined that the public interest in immigration enforcement outweighed the individual's liberty interest in their freedom of movement.

1.1.1. INA § 287(a)(1) authorizes agents to interrogate any alien, or a person believed to be an alien, regarding his right to be or remain in the United States.

1.1.2. INA § 287(a)(3) authorizes agents to enter private lands located within 25 miles of the external boundary of the United States for the purpose of patrolling the border, and to search vehicles within a reasonable distance from the border.

1.2. Even though, as immigration officers, Border Patrol Agents have the statutory authority to conduct immigration inspections at immigration checkpoints and the Supreme Court decision *United States v. Martinez-Fuerte*, 428 U.S. 543 (1976), supports our efforts in this regard, our every action must pass the Constitutional analyses and we must conduct our immigration status determinations in the least intrusive manner possible. Noncompliant motorists, have a right to remain silent, but those who fail to acknowledge and or respond to questions pertaining to their citizenship, may be detained for a reasonable amount of time while Border Patrol Agents attempt to determine citizenship and or other evidence of wrongdoing. When the purpose of the encounter switches from immigration enforcement to suspicion of other crimes, a Fourth Amendment violation occurs unless the Border Patrol Agent is able to articulate individualized suspicion of a non-immigration related violation of law. An immigration checkpoint allows immigration officers to conduct immigration inspections of occupants in vehicles traveling away from the international border. It is unlawful and a violation of the U.S. Constitution for federal and or state law enforcement officers to establish checkpoints or to operate existing checkpoints for general crime control purposes.

1.3. The purpose of an immigration checkpoint is to deter subjects from crossing the border illegally, delay illegal aliens and human smugglers from departing the border region and egressing into the interior of the United States in mass via conveyances, and to identify subjects who have managed to evade detection and arrest at the immediate border and are now attempting to travel to the interior. The presence of an immigration checkpoint at all major routes of egress leading away from the international border already accomplishes a portion of the objective simply by its establishment and operation, which is to deter people

from illegally crossing the border and to influence and delay the northerly movement of people who have illegally crossed the border.

1.4. The intent of stopping vehicles at immigration checkpoints is to determine the immigration status of the occupants of a vehicle or identify vehicles that are being used by human smugglers to transport illegal aliens. Border Patrol Agents must utilize all available resources, tools and experience to rule out the likelihood that the noncompliant motorist is a human smuggler or an illegal alien. When a noncompliant motorist is encountered who will not answer immigration questions, but is willing to theorize and philosophize on political matters or make reference to the U.S. Constitution, Bill of Rights, to include specific amendments, current affairs related to politics, and other related matters, many times these topics of conversation can lead to a determination of immigration status to a higher degree of probability more so than someone simply acknowledging and or offering a one word response to an immigration question.

1.5. The advantage of encountering a noncompliant motorist is that they actually provide Border Patrol Agents with more opportunity to determine likelihood of citizenship and or wrongdoing. Typically, the determination of citizenship process at a checkpoint lasts only a few seconds, but noncompliant motorists allow for a more comprehensive inspection of a vehicle and a closer examination of its' occupants.

1.6. When attempting to sufficiently adjudicate a situation involving a noncompliant motorist, Border Patrol Agents may conduct a comprehensive visual inspection of a conveyance, deploy a detection canine, (b) (7)(E)

(b) (7)(E)

(b) (7)(E)

Border Patrol Agents may also take into consideration that they are being recorded by a handheld device or that the vehicle is affixed with multiple recording devices both within the interior and exterior of a vehicle. Border Patrol Agents may (b) (7)(E) while they conduct further inspection of the vehicle, its occupants and visible contents.

1.7. Other factors that a Border Patrol Agent can take into consideration (b) (7)(E)

(b) (7)(E)

1.8. There are many instances when a motorist simply wants to know what it is that we are doing, why we are doing it and our authority for doing it. When encountering a motorist making these inquiries, clearly identify yourself, state the purpose of the checkpoint, the intent of the stop and advise of our authority to conduct checkpoint operations. As public servants, especially when conducting checkpoint operations, we interact with people from all walks of life and varying political perspectives, temperament, attitudes toward law enforcement, maturity and understanding of our organization and authorities. Regardless of the circumstances, it's critically important that as federal agents and public servants, we exercise patience, impartiality and self-restraint at all times. Patience, restraint and job knowledge will help secure the support of the public and will most often defuse any potentially volatile interaction with the people of whom we proudly serve.

1.9. A very small percentage of the commuting public actually refuse to respond to questions pertaining to immigration status. Be mindful that many noncompliant motorists want to engage us for entertainment purposes. It is imperative that we adjudicate the situation timely, professionally and within the scope of our authority understanding that our interaction with these subjects will likely be viewed by thousands of people via social media and can also be submitted into court as evidence. It is imperative that you know and understand your authorities and never guess at them or proclaim false assertions and or violations of other statutes, federal or state. Some motorists may choose to voice their opposition, voice a differing political perspective or express concerns pertaining to their Constitutional rights. As public servants, it is important that we remain neutral, if not apolitical, and focus attention on our responsibilities and the objective at hand.

1.10. Typically, noncompliant motorists are subjects who do not represent an immediate threat or flight risk and who do not offer physical resistance to control efforts, but who are otherwise uncooperative. Just the fact that someone is refusing to answer questions or is being otherwise passively noncompliant, absent exigent circumstances, does not equate to a violation of law.

2. Title 18 U.S.C. § 111(A)

2.1. Assaulting, resisting, or impeding certain officers or employees: Whoever forcibly assaults, resists, opposes, impedes, intimidates, or interferes with [a federal officer] ...shall, where such acts involve physical contact with the victim of that assault or the intent to commit another felony, be fined under this title or imprisoned not more than 8 years.

3. Use of Force

3.1. In an effort to prevent a safety hazard, Border Patrol Agents may use force necessary to move a motor vehicle off of the roadway into secondary. Remember that any use of force must fall within the CBP Use of Force policy guidelines and must be objectively reasonable given careful consideration toward the totality of the circumstances of each particular case. Border Patrol Agents should advise the noncompliant motorist that if they refuse to move the vehicle into secondary for the purpose of additional inspection and because they are creating

a safety hazard for Border Patrol Agents, the commuting public and themselves, they will be forced to move the vehicle and extract the motorist from the vehicle.

3.2. Force should be used as a last resort given due consideration to traffic flow and valid concerns for the safety of Border Patrol Agents, commuting public and also the noncompliant motorist. Prior to the use of force, it is strongly recommended that Border Patrol Agents contact and seek assistance from state and local law enforcement because the noncompliant motorist may also be in violation of state and local traffic laws. Prior to the final decision to use force to extract a noncompliant motorist, Border Patrol Agents should clearly explain the intent to use force and the reason for the use of force. Every consideration should be given to minimizing any potential for injury to the noncompliant motorist.

3.3. Once the noncompliant motorist has been safely extracted, the vehicle moved to a safe location, and the flow of traffic established, Border Patrol Agents should advise the noncompliant motorists that they have been placed under arrest. Absent consent or probable cause, Border Patrol Agents must remain mindful of the rules pertaining to searching an individual and or vehicle incident to a lawful arrest.

Attachment 4

Checkpoint Authority

Anti-Smuggling Laws

8 U.S.C. 1324-Federal law prohibits smuggling and transporting illegal aliens. Violators may face a sentence up to 10 years of prison.

Unlawful Fleeing From Checkpoints

18 U.S.C. 238-Federal law prohibits fleeing checkpoints at an illegal rate of speed. Violators may face criminal prosecution and/or fines.

Impeding A Federal Agent

18 U.S.C. 111-Federal law prohibits assault on a federal agent and/or impeding a federal agent during the course of official duties. Violators may face criminal prosecution and/or fines.

USBP Canine Authority

USBP canines operate at immigration checkpoints in accordance with Supreme Court judicial ruling (U.S. vs. Davis-Avila, 895 F.2d 266 (5th Circuit 1990)).

- A canine alert is probable cause for a warrant-less search of a vehicle.
- A canine sniff in the primary inspection lane(s) of a checkpoint is in accordance with the 4th Amendment.
- A canine sniff at secondary inspection is in accordance with the 4th Amendment.

Additional Information

Thank you for your courtesy when traveling through USBP immigration checkpoints. We appreciate your cooperation as we continue to secure our Nation's borders and faithfully discharge the duties given to us by the American people.

Publication No. 0949-08-07



U.S. Customs and
Border Protection

U.S. Border Patrol

Checkpoint Authority

United States Border Patrol

The United States Border Patrol (USBP), a component of the Department of Homeland Security (DHS), is the primary uniformed federal law enforcement agency dedicated to securing U.S. borders between official ports of entry from illegal immigration, illicit smuggling, and terrorism.

Immigration Checkpoints

USBP immigration checkpoints conduct inspections of passengers traveling on roads and highways leading away from border areas that are used by illegal aliens (some of whom could be criminals or terrorists) and smugglers to travel into the United States. They provide an additional layer of response and deterrence to the USBP strategy on illegal immigration, serving the overall national security mission (United States v. Ruiz-Hernandez, 4:16-cr-00511-(CK)-LAB(D. Ariz)).

Legal Authority

USBP immigration checkpoints legally operate in accordance with judicial rulings based on INA Section 287(a)(3) and 8 U.S.C. § 1357(a)(3).

- Border Patrol agents may question suspected aliens or persons regarding their citizenship or right to be in the United States.
- Border Patrol agents may board and search for aliens in any vehicle.
- Border Patrol agents may take and consider evidence.

Supreme Court ruling in Martinez-Puente, 428 U.S. 541 (1976). The Supreme Court held that immigration checkpoints are constitutional.



U.S. Customs and
Border Protection

U.S. Border Patrol



DEPARTMENT OF HOMELAND SECURITY
U.S. CUSTOMS AND BORDER PROTECTION
EL CENTRO SECTOR

TRANSMITTAL AND ROUTING SLIP

ACTION
CODES

C = Concurrence A = Approval S = Signature P = Process E = Evaluation
R = Review I = Issue D = Distribution F = File

Subject:

Date Received:

Suspense Date:

Revised (b) (7)(E) Non-Compliant Motorist Protocol

Jan 16, 2018

TO	DESTINATION	ACTION CODE(S)	INITIALS	OUT DATE	COMMENTS
1.	DPC (b) (6), (b) (7) (c)	R/A/D	(b) (6), (b) (7)	1-16-18	
2.	(A) XO (b) (6), (b) (7) (c)	R/A/S	(b) (6), (b) (7) (c)	1/23/18	
3.	ACPA (b) (6), (b) (7) (c)	R/A/S	(b) (6), (b) (7) (c)	1/23/18	
4.	DC MRC (b) (6), (b) (7) (c)	R/A/S	(b) (6), (b) (7) (c)	23 Jan 18	
5.	(A) DC LEOP (b) (6), (b) (7) (c)	R/A/S	(b) (6), (b) (7) (c)	1/24/18	(b) (7)(E)
6.	DC LEOD (b) (6), (b) (7) (c)	R/A/S	(b) (6), (b) (7) (c)	1/25/18	(b) (7)(E)
7.	(A) DCPA (b) (6), (b) (7) (c)	R/A/S	(b) (6), (b) (7) (c)	1/25/18	
8.	(A) CPA (b) (6), (b) (7) (c)	R/A/S	(b) (6), (b) (7) (c)	1/25/18	Signed
9.					
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Originator: (A) SOS (b) (6), (b) (7) (c) Extension (b) (6), (b) (7) (c)

FROM (b) (6), (b) (7) (c)	TITLE Staff Assistant	PHONE (b) (6), (b) (7) (c)	DATE Jan 16, 2018
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